

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THERNELL SMITH,

Plaintiffs,

-against-

9:06-CV-1196
(LEK/DEP)

T. CHRISTOPHER, Sergeant at Auburn
Correctional Facility, *et al.*,

Defendants.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on August 19, 2008 by the Honorable David E. Peebles, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3 of the Northern District of New York. Report-Rec. (Dkt. No. 27). After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by Defendants Mitchell and Whitney, which were filed on September 3, 2008. Objections (Dkt. No. 28).

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A [district] judge... may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 27) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

ORDERED, that Plaintiff's Motion for summary judgment (Dkt. No. 20) is **DENIED in its entirety**; and it is further

ORDERED, that Defendants' Motion for partial summary judgment (Dkt. No. 23) is **GRANTED in part**; and it is further

ORDERED, that Plaintiff's claims against Defendants Mitchell and Whitney alleging verbal threats and the filing of false misbehavior reports are **DISMISSED with prejudice**; and it is further

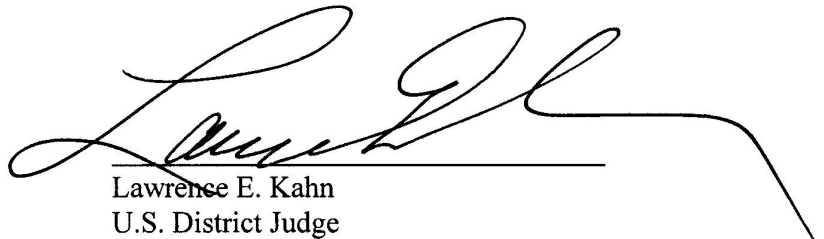
ORDERED, that Plaintiff's claims against Defendant Shick are **DISMISSED with prejudice**; and it is further

ORDERED, that Defendants' Motion for partial summary judgment (Dkt. No. 24) is **DENIED in part** as to Plaintiff's dirty water and coffee retaliation claims against Defendants Mitchell and Whitney; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: September 15, 2008
Albany, New York



Lawrence E. Kahn
U.S. District Judge